

COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON

FILED
COURT OF APPEALS
DIVISION II
2019 AUG -5 AM 8:57
STATE OF WASHINGTON
BY JH
DEPUTY

STATE OF WASHINGTON)

Respondent)

v.)

Alejandro Anaya-Cabrera)
(your name))

Appellant)

No. 53151-8-II

STATEMENT OF ADDITIONAL
GROUND FOR REVIEW

I, Alejandro Anaya-Cabrera, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground 1

See attached Additional Ground 1, page (1)

Additional Ground 2

See attached Additional Ground 2, page (2)

Additional Ground 3

See attached Additional Ground 3, page (3)

If there are additional grounds, a brief summary is attached to this statement.

Date: 07/31/19

Signature: 

Additional Ground 2

Did the sentencing Court abuse its discretion by misunderstanding its sentencing authority?

The Sentencing Court imposed to Mr. Anaya-Cabrera a sentence of 18 month enhancement for being "armed" with a firearm at the commission of the crime on two counts of simple possession of a controlled substance consecutive to each other and consecutive to the standard range.

The Sentencing Court was mindful that the drugs and gun possession were separate acts, but the 36 month enhancement was an unavoidable result based on the jury's finding RP(16-25)392, and it is a required RP(7) 393.

In State v. McFarland, 189Wn. 2d 47, 55, 399 P.3d 1106(2017) our Supreme Court held that when multiple firearm enhancements result in a presumptive sentence that is clearly excessive, the Trial Court may run the firearm enhancements concurrently as part of an exceptional mitigated sentence under RCW 9.94A.535 (1)(g). And even in cases where a defendant did not request an "exceptional mitigated sentence" remand is appropriate when "the record suggest at least the possibility that the sentencing court would have considered imposing concurrent firearm - related sentences had it properly understood its discretion" to do so. McFarland, 189 Wn. 2d at 50. See State v. Holcomb 2018 Wash. App. LEXIS 2580.

Additional Ground 3

The impound of a vehicle is unlawful unless the vehicle is evidence of a crime. Did the State Court abuse its discretion by denying suppression of evidence for unlawful impound of vehicle?

Deputy Peterson stated he decided to impound the vehicle when he discovered the drugs on the defendants person RP(17-21) 58. He abused his authority because at that point it was a simple possession. RP(22-24)51,52. The deputy stated "And, because of his proximity to it and the nexus between the two of them and his history." He also made the claim "So, in my mind the truck was going to be seized in preparation for a search warrant." RP(24-25) 63, (1-4) 64. When counsel asked Deputy Peterson what has he heard of the defendant, Deputy Peterson answered that he has heard some other things about "Damian", not the defendant. RP(23-25)32. Mr. Anaya-Cabrera doesn't have any criminal history before this charge and Deputy Peterson has never seen the defendant at the property before. RP(4-7)39. There was no other reason to impound the truck since it was parked where the defendant lived. RP(1-3)77.

Additional Ground 1

Did the Trial Court abuse its discretion by denying Suppression of material evidence for governmental misconduct?

Misconduct occurs when the prosecutor inexcusably fails to act with due diligence. To obtain dismissal under CrRLJ 8.3(B) a defendant must show arbitrary action or governmental misconduct but the government misconduct need not to be of an evil or dishonest nature, simple mismanagement is enough. State v. Dailey 93 Wn. 2d 454,457,610 p.2d 357(1980)

The Court asked prosecution what was the reason why the evidence was not sent to the lab previously and prosecution did not have an answer for that RP(1,3)169.

The state cannot by its own unexcused conduct force a defendant to choose between his speedy trial rights and his right to effective Counsel who has had the opportunity to adequately prepare a material part of his defense. State v. Prince 94 Wn. 2d at 810, 814, 620 P.2d 994(1980). There is actual prejudice because the state's late disclosure forced the defendant to choose between his speedy trial with adequately prepared counsel. See U.S. Const. Amend. VI. The fact that he was faced with the choice at all is enough to find prejudice. State v. Brooks 149 Wn. App 373, 387, 203 P.3d 397 (2009). The State did not live up to its discovery obligations CrRLJ 4.7. If we allow underfunding and congestion at the States toxicology lab to excuse fair trial rights, there will be no inducement for the State to remedy the problem. State v. Wake, 56 Wn. App. 472, 475, 783 P.2d 1131 (1989)

DECLARATION OF SERVICE BY MAIL
GR 3.1

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STATE OF WASHINGTON
BY DEPUTY

I, Alejandro Anaya-Cabrera, declare and say:

That on the 31 day of July, 2019, I deposited the
following documents in the Stafford Creek Correction Center Legal Mail system, by First
Class Mail pre-paid postage, under cause No. 53151-8-II:
appellant Alejandro Anaya-Cabrera statement of
additional grounds 4 pages.

addressed to the following:

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I declare under penalty of perjury under the laws of the State of Washington that
the foregoing is true and correct.

DATED THIS 31 day of July, 2019, in the City of
Aberdeen, County of Grays Harbor, State of Washington.

Signature

Print Name

Alejandro Anaya-Cabrera

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